

JAN 23 2009

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Docket No. A01341 US-3
KC/

In re application of:
Megan Anne Diehl et al. :

Serial No.: 10/665,343 : Group Art Unit: 1616

Filed: September 18, 2003 : Examiner: Sabiha Naim Qazi, Ph.D.

For: Synergistic Microbicidal Combinations

DECLARATION UNDER 37 C.F.R. § 1.132

I, Eileen F. Warwick, of 1221 Snyder Road, Lansdale, PA 19446, declare and say as follows:

1. I have been employed at the Rohm and Haas Company since 1981. I have a Bachelor of Science degree in Chemistry from the University of Delaware (1981). I have been working in our Biocides Business since 1987. My job responsibilities have included both conducting and supervising others in conducting a wide range of microbiological and analytical tests of biocides and biocide combinations in support of new product development as well as sales and technical service. I have supported biocide applications in consumer products as well as in industrial applications including paints and coatings, adhesives and sealants, wood, marine antifouling coatings, water treatment, metalworking fluids and plastics. I

am currently Technology Manager responsible for Biocides Regulatory Chemistry and Distinguished Scientist responsible for External Biocide Technologies.

2. I have been the co-inventor of ten U.S. patent applications related to biocides filed during my tenure at Rohm and Haas Company.

3. As a co-inventor of the present invention, I am thoroughly familiar with its subject matter and background.

4. My experience and knowledge of the biocides field indicate that both the existence of synergy between a particular pair of biocides and the ratios of the two biocides for which synergy might be observed are not predictable. Moreover, synergistic interactions between two biocides often occur only against some of the microorganisms against which they are tested. For example, the data in the present application show that 2-methyl-3-isothiazolone ("MI") and benzoic acid (see Table 1, page 12) are not synergistic against *S. aureus* or *A. niger*, while MI and sorbic acid (see Table 3, page 15) are not synergistic against *C. albicans* and only slightly against *P. aeruginosa*. Thus, these two biocide pairs have almost exactly opposite activity profiles against the four microorganisms used in our tests. This could not have been predicted, nor could the ratios at which these biocide pairs displayed synergy. The fact that the biocide combinations tested for the present application were not always synergistic against all organisms and/or at all ratios demonstrates that any synergistic activity observed at any particular ratio could not have been predicted or expected.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or

both, under Section 1001 of Title 18 of the United State Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

A handwritten signature in cursive script, reading "Eileen F. Warwick", is positioned above a horizontal line.

Eileen F. Warwick

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Date: January 15, 2009